

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 201 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SIDUBHA MOTISANG

Appearance:

MR SR DIVETIA, APP, for Petitioner

MR MJ BUDDHBHATTI for Respondent No. 1, 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 06/04/98

ORAL JUDGEMENT

Learned APP Mr Divetia, on behalf of the State and learned advocate Mr Buddhbhatti on behalf of the respondents-original accused were heard.

This appeal is filed by the State against the judgment of the Judicial Magistrate, First Class, Khambhalia in Criminal Case No.105/85 by which the

learned Judicial Magistrate, First Class, Khambhalia acquitted the respondents of the charge of offence under section 324, 323, 506(2), 447 and 114 of the Indian Penal Code.

In all, in this case, three injured eye witnesses and three supporting eye witnesses have been examined by the prosecution. Injuries on the body of the injured are proved by the medical evidence. The learned APP has vehemently argued that the presence of all these three injured witnesses at the scene of offence is proved beyond doubt. It is also proved that the witnesses had injuries. Medical evidence is also led by the prosecution and the complaint was given immediately after the incident. The witnesses were examined immediately after the incident by the Medical Officer. One of the witnesses has received a fracture injury. There may be some mistake in describing place of injury and minor discrepancy in the prosecution case for which the prosecution case cannot be thrown out. Therefore, Mr Divetia has argued that the the proseuctiosn is able to prove the guilt of the accused beyond reasonable doubt and the learned Magistrate has erred in acquitting the accused. He further argued that since the fracture is found on the body of witness, both the accused are required to be convicted under section 325 of the Indian Penal Code though no charge has been framed under that section which will be a mere irregularity.

On the other hand, Mr Buddhbhatti has argued that the evidence is to be appreciated in totality. If the evidence of 3 injured eye witnesses along with the medical evidence and then again the evidence of 3 other supporting eye witnesses along the above evidence of injured witnesses is appreciated, then certainly it casts a doubt on the prosecution case. Mr Budhbhatti has further argued that in addition to these 6 witnesses, it is the prosecution case that PW 4 is also an eye witnesses, but he deposed as a panch witness and nothing testified regarding the incident. Mr Budhbhatt has therefore, supported the judgment of the trial court.

Having considered the rival contentions and appreciating the evidence afresh, it clearly appears that each injured eye witness deposes somewhat different story than the other. This is a case where the evidence is required to be appreciated in totality and not in isolation. There is major discrepancy between the medical evidence and the ocular evidence. Witnesses said to have received injuries on certain part of the body which are not found by the Medical Officer and the injury

which the Medical Officer has found is not testified by the witnesses. Thus, this is a major discrepancy which casts shadow on the prosecution case. The learned trial Magistrate has acquitted the accused because there were discrepancies in the story of three eye witnesses. Even appreciating their story with other three supporting eye witnesses, along with the discrepancies with medical evidence if considered, it can certainly be said that the prosecution has failed to establish the charge against the accused beyond reasonable doubt. Though the injuries on the body of the eye witnesses are proved, the true version and genesis of the prosecution case is very much doubtful as narrated by all the 6 witnesses because each witness put different story than the other eye witness. In this state of affairs when doubt is created as to how the incident has occurred, then it must be resolved in favour of the accused. For these reasons, I do not consider it proper to interfere with the judgment of the learned Judicial Magistrate, First Class.

The appeal, in the result, is dismissed.

.....

(vjn)